



Docket No: AM100143
Patent

1646
#5
Dmt
8-7-02

In re of Application of: Gregory S. Friedrichs et al.
Serial No.: 09/779,039 Group Art No.: 1646
Filed: February 8, 2001 Examiner: J. Murphy
For: Method of Treating or Inhibiting Cellular Injury or Cell Death
Confirmation No.: 4428
Customer Number: 25291

Commissioner of Patents
Washington, DC 20231

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RESPONSE TO RESTRICTION REQUIREMENT

This is in reply to the Office Action mailed on July 1, 2001 received in the above-identified patent application.

REMARKS

Claims 1-17 are pending in the application.

At page 2 of the Office Action the Examiner required that the present application be restricted to one of the following allegedly distinct species, claims where the cellular injuries are caused by the injuries listed in claims 2 and 8. Also, the Examiner required that the application be restricted to claims where the TNF alpha antagonist is etanercept or claims where the TNF alpha antagonist is p55TNFR:Fc. The Examiner argued that these species are distinct since their structures and modes of action are different.

Applicants respectfully traverse the rejection. It is submitted that the claimed TNF alpha antagonists, etanercept and p55TNFR:Fc, are so closely related that a search for one compound would necessarily lead to the disclosure of the other compound. Accordingly, it is respectfully submitted that there would be minimal additional burden, if any, on the Examiner to consider all of claims 1-17 as presented together.

In accordance with 35 U.S.C. 121, and assuming that the restriction requirement will not be withdrawn, applicants hereby elect for prosecution the claims directed to the injuries listed in claim 2 and etanercept, Claims readable thereon include Claims 1, 2, 3, 4, 5, 7, 9, 10, 11, 13, 14, 15 and 16.

CERTIFICATE OF MAILING 37 CFR §1.10

I hereby certify that this paper and the documents referred to as enclosed therein are being deposited with the United States Postal Service on the date written below in an envelope as "Express Mail Post Office to Addressee" Mailing Label Number EU485388505US addressed to the Commissioner for Patents, Washington, DC 20231.

Date

7-31-02

John R. Barker